

Supreme Court, U. S.

FILED

MAY 27 1977

MICHAEL RODAK, JR., CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. '76-1117

ARCHIE PELTZMAN, PETITIONER,

v.

IRVING R. KAUFMAN,  
CHIEF JUDGE, RESPONDENT.

ON MOTION FOR LEAVE TO FILE A PETITION  
FOR A WRIT OF MANDAMUS AND ON PETITION FOR  
A WRIT OF MANDAMUS

REPLY BRIEF FOR PETITIONER

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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

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No. 76-1117

ARCHIE PELTZMAN, PETITIONER

V.

IRVING P. KAUFMAN, CHIEF JUDGE OF THE  
UNITED STATES COURT OF APPEALS FOR  
THE SECOND CIRCUIT

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ON MOTION FOR LEAVE TO FILE A PETITION  
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REPLY BRIEF FOR PETITIONER IN SUPPORT  
OF MOTION

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1. The questions presented in this motion have not been rebutted by the respondent. There is no rebuttal to the list of cases supporting petitioner's argument that the

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demand for a docket fee from a seaman who had previously appealed twice in the second circuit Court Of Appeals in the same cause of action, & against the same defendant, (without paying the docket fee) was a usurpation of power which this Court under its supervisory powers should correct.

"The supplementary review power conferred on courts by Congress in the all writs act is meant to be used only in the exceptional case where there is a clear abuse of discretion or usurpation of judicial power," Bankers Life & Gas Co. v. Holland 346 US 379.

"Extraordinary writs are reserved for really extraordinary causes, & then only to confine an inferior Court to a lawful exercise of its prescribed jurisdiction, or to compel it to exercise its authority when it is its duty to do so. Platt v

Minnesota Mining & Mfg.Co. 376 US 24.

See Harris v Nelson 394 US 286 (rehearing denied 394 US 1025-All Writs Act-designed to achieve rational ends of Law.

2. Respondent alleges the pro se clerk made an error in the handling of petitioner's appeal that now has been corrected. Petitioner argues that respondent's insistence on deciding the issue of payment of the docket fee is still an error since this issue has been decided twice in this action in petitioner's favor and the statute Title 28 Sec.1916 is not ambiguous or open for interpretation since 1932 when Bainbridge v Merchants Transportation Co 287 US 280 was decided and there held that seaman's docket fee was returnable because the Jones Act was enacted for seamen's health & safety..In addition this case concerns initiation fees,& dues demanded from a seaman contrary to Title 46 Sec

599(a) ,which forbids anyone from demanding payment from a seaman for providing him with employment.The Federal Labor Laws also forbid payment of dues until employee joins a union.See Classified Index of NLRB decisions requiring non-members to pay referral fees not reasonably related to services.Laborers Local 573 (F.F. Menger Construction Co.196 NLRB No 062.(by insisting as condition of referral that nonmembers agree to immediate deduction of "working dues",and collecting dues from employees denied membership)

3.Petitioner refers to Rule 25 of Federal Rules of Appellate Procedure Oct.1972.Filing & Service-(a)-Filing-Papers required or permitted to be filed in Court Of Appeals should be filed with clerk.

Rule 47 Of Appellate Procedure provides... In all cases not provided for by rule,the Courts of Appeals may regulate their practice in any manner not inconsistent with

these rules..Petitioner argues that allowing a pro se clerk to make a determination delegated to the clerk of the Court is inconsistent with the above rules,& the error whether by pro se clerk or clerk of the Court or counsel or Judge should be corrected as soon as possible.

"Where federally protected rights have been invaded,Courts will be alert to adjust their remedies so as to grant the necessary relief".Bell v Hood 327 US 68,13ALR 2d 383 ,1946.

"The Supreme Court has broad supervisory powers over judgments of lower Federal Courts,US v Munsengwear 340 US 36,1950. See Washington v Davies 96 Supreme Court 2040-erroneous application of statutory standards.(plain error rule).

See Norton v Matthews,96 Supreme Court 2771-...Supreme Court retains power to make such corrective order as may be appropriate to the enforcement of the

limitations imposed by statute.

4.Finally,Petitioner argues that Maritime Law controls this case.Petitioner signed articles for three separate foreign voyages, each for one years duration or less if the vessel returned to a continental port in US. In effect he had a statutory contract of one years duration on three separate voyages,with all the protection under the maritimelaw against discharge for any cause except related to the faithful discharge of his duties aboard ship.

Both company & union claim that under the bargaining agreement petitioner after thirty days must join the union,pay the initiation fee,& dues,or be discharged from his job because he would be in violation of the agreement.

Since such a construction of this case in effect repeals the maritime law,& makes it null & void,the substantive issue here is which law controls a seaman's employment?

This Court ruled in June 1976, that Maritime Law, & Federal Labor Law controlled a seaman's employment, and that state law was not controlling, since seaman's job situs was on the high seas. Oil Chemical & Atomic Workers v Mobil Oil Corp, reversing 504 F2 272 43 LW 3226.

Conclusion

As set forth in petitioner's motion for leave to file petition for writ of mandamus, & brief in support thereof, the motion & the relief requested therein should be granted, with such additional relief & process as may be necessary & appropriate in the premises.

Respectfully submitted

Archie Peltzman

May 24, 1977

Archie Peltzman. Pro Se